

Court of Common Pleas of Philadelphia County
Trial Division
Civil Cover Sheet

APRIL 2017 001646 TICKET NO: 179686									
PLAINTIFF'S NAME ROBERT HOLTON	DEFENDANT'S NAME CASE NO: 170401646 City of Philadelphia, Department of Licenses and Inspections								
PLAINTIFF'S ADDRESS 4085-4087 Richmond Street a/k/a 3950 N. Delaware Avenue Philadelphia, PA 19137	DEFENDANT'S ADDRESS Operations Division, East District, 7522 Castor Avenue Philadelphia, PA 19152								
PLAINTIFF'S NAME	DEFENDANT'S NAME City of Philadelphia, Department of Licenses and Inspections								
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS Municipal Services Bldg., 1401 John F. Kennedy Boulevard Philadelphia, PA 19102								
PLAINTIFF'S NAME	DEFENDANT'S NAME								
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS								
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NO. OF DEFENDANTS 2								
COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition Action <input type="checkbox"/> Transfer From Other Jurisdictions <input type="checkbox"/> Notice of Appeal									
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-Jury <input type="checkbox"/> Other: <input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input type="checkbox"/> Petition <input type="checkbox"/> Minor Court Appeal <input checked="" type="checkbox"/> Statutory Appeals <input type="checkbox"/> Commerce (Completion of Addendum Required) <input type="checkbox"/> Settlement <input type="checkbox"/> Minors <input type="checkbox"/> W/D/Survival								
CASE TYPE AND CODE (SEE INSTRUCTIONS) Local Agency - Other EQUITY REAL ESTATE TRO									
STATUTORY BASIS FOR CAUSE OF ACTION (SEE INSTRUCTIONS)									
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER) <div style="text-align: center;"> Holton Vs City of Philadelphia Department Of-CMPLT  17040164600003 </div>									
IS CASE SUBJECT TO COORDINATION ORDER? <table style="width: 100%;"> <tr> <td style="text-align: center;">Yes</td> <td style="text-align: center;">No</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Yes	No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yes	No								
<input type="checkbox"/>	<input type="checkbox"/>								
<input type="checkbox"/>	<input type="checkbox"/>								
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TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: Papers may be served at the address set forth below.									
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY JACK M. BERNARD,	ADDRESS (SEE INSTRUCTIONS) 1515 Market Street Suite 1520 Philadelphia, PA 19102								
PHONE NUMBER (215) 665-0666	FAX NUMBER (267) 514-8609								
SUPREME COURT IDENTIFICATION NO. 26643	E-MAIL ADDRESS jackbernard@verizon.net								
SIGNATURE	DATE April 11, 2017								

\$ 328.48 + \$15.00

JACK M. BERNARD, ESQUIRE

Attorney I.D. 26643

1515 Market Street, Suite 1520

Philadelphia, PA 19102

Phone (215) 665-0666

Fax (215) 665-0206

jackbernard@verizon.net

Attorney for Plaintiff

ROBERT HOLTON

Plaintiff,

vs.

CITY OF PHILADELPHIA

**DEPARTMENT OF LICENSES and
INSPECTIONS**

OPERATIONS DIVISION, EAST DISTRICT

and

CITY OF PHILADELPHIA

**DEPARTMENT OF LICENSES and
INSPECTIONS**

Defendants

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION**

APRIL TERM, 2017

NO. 001646

ORDER FOR PRELIMINARY INJUNCTION

AND NOW, this 12th day of April, 2017, upon the Complaint of Plaintiff, Robert Holton, for Injunctive Relief Pursuant to Applicable Provisions of the Philadelphia Code, Plaintiff's motion for a preliminary injunction, and the Court being duly advised, it is

ORDERED and **DECREED** that Defendant, City of Philadelphia, Department of Licenses and Inspections is preliminary enjoined from enforcement of the Department's Intent To Cease Operations pending determination of Plaintiff's appeal to the Board of Licenses and Inspection Review. Jurisdiction is retained to enter such other and further orders as may be necessary and appropriate in the circumstances.

BY THE COURT:

J.

J.

JACK M. BERNARD, ESQUIRE

Attorney I.D. 26643

1515 Market Street, Suite 1520

Philadelphia, PA 19102

Phone (215) 665-0666

Fax (215) 665-0206

jackbernard@verizon.net

Attorney for Plaintiff

ROBERT HOLTON

Plaintiff,

VS.

**CITY OF PHILADELPHIA
DEPARTMENT OF LICENSES and
INSPECTIONS
OPERATIONS DIVISION, EAST DISTRICT
and**

**CITY OF PHILADELPHIA
DEPARTMENT OF LICENSES and
INSPECTIONS**

Defendants

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION**

APRIL TERM, 2017


NO.

001646

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, Robert Holton, moves for entry of an order granting a preliminary injunction enjoining the City of Philadelphia, Department of Licenses and Inspections from enforcement of its Intent to Cease Operations pending review before the Board of Licenses and Inspections Review.

Dated: April 12, 2017


JACK M. BERNARD, ESQUIRE
Attorney for Plaintiff

JACK M. BERNARD, ESQUIRE

Attorney I.D. 26643

1515 Market Street, Suite 1520

Philadelphia, PA 19102

Phone (215) 665-0666

Fax (267) 514-8609

Attorney for Plaintiff

ROBERT HOLTON

4085-4087 Richmond Street a/k/a

3950 N. Delaware Avenue

Philadelphia, PA 19137

Plaintiff,

vs.

CITY OF PHILADELPHIA**DEPARTMENT OF LICENSES and****INSPECTIONS****OPERATIONS DIVISION****EAST DISTRICT**

7522 Castor Avenue

Philadelphia, PA 19152

and

CITY OF PHILADELPHIA**DEPARTMENT OF LICENSES and****INSPECTIONS**

Municipal Services Building

1401 John F. Kennedy Boulevard

Philadelphia, PA 19102

Defendants

COURT OF COMMON PLEAS**PHILADELPHIA COUNTY****CIVIL TRIAL DIVISION**

APRIL TERM, 2017

001646

NO.

CIVIL ACTION (51)**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Philadelphia Bar Association
Lawyer Referral and Information
One Reading Center
Philadelphia, PA 19107
(215) 238-6333

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas-sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se efende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, le corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SINO TIENE ABOGADO O SINO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA

AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Asociacion De Licenciados De Filadelfia
Servicio De Referencia E Informaion Legal
One Reading Center
Filadelfia Pennsylvania 19107
Telefono: (215) 238-6333

2. On March 2, 2017, City of Philadelphia inspectors inspected this facility with

personnel in approximately 70 vehicles.

3. Thereafter, at some unknown date, inspectors issued 13 separate alleged license and specific violations. All of the violations are back dated to March 2, 2017.

4. Plaintiff commenced an appeal to the Board of License and Inspection Review on April 3, 2017, in accordance with applicable provisions of the Philadelphia Code. (April 1, 2017 was a Saturday and April 2, 2017 was Sunday.)

5. Plaintiff seeks preliminary injunctive relief in accordance with the City of Philadelphia, Department of Licenses and Inspections Notice of Intent to Cease Operations and Order, a true copy of which is attached hereto, marked Exhibit "A" stating, in pertinent part:

"Due to the nature of the violations cited in the Notice of Violation of Case No. 574778, as referenced above, the Department issues this **INTENT TO CEASE OPERATIONS** which will become effective April 12, 2017. This is your FINAL WARNING prior to issuance of a Cease Operations."

"This Notice of Intent to Cease Operations and Order can only be vacated by obtaining an immediate stay of enforcement as set out in the Administrative Code...Should you wish to appeal the Notice of Violation and the Cease Operation, you must file that appeal with the Board's Administration within thirty (30) days of the later (sic) of this Notice."

6. Section 5.0 of the City of Philadelphia, Department of Licenses and Inspections Regulations authorizes appeals to the Board of Licenses and Inspection Review.

7. Plaintiff is innocent of the alleged violations and alleged missing licenses, a true copy of which is attached hereto, marked Exhibit "B", to wit:

(a) Plaintiff has and has had auto wrecking licenses issued by the City of Philadelphia and the Commonwealth of Pennsylvania for more than 20 years;

(b) Plaintiff has a hazardous materials license;

(c) Plaintiff has fire extinguishers due to be renewed, tagged for May 2017;

(d) Plaintiff has Material Safety Data Sheets (MSDS) – All fluids on site;

(e) Plaintiff has a 704 sign, Hazmat ID located on the exterior fence near the entrance as required;

(f) There is no high pile storage of cars – 20 feet and 16 feet are allowed. Plaintiff is in compliance with that requirement;

(g) All weeds have been removed. Grass is cleaned up;

(h) Extension cords for two diesel trucks are put away since they are only used in the winter;

(i) Cart/Tank label on drums are in compliance. (A previous inspector said to spray paint; the last inspector required labels.);


(j) the “no smoking sign” is prominently displayed;

(k) Plaintiff has a scale license; and

(l) Plaintiff is in compliance with zoning classification “LR” and always has been in compliance.

WHEREFORE, Plaintiff moves for issuance of an order for a preliminary injunction or other relief restraining the City of Philadelphia, Department of Licenses and Inspections enforcement of its “Cease Operations” order pending administrative review before the Board of Licenses and Inspections Review.

Dated: April 11, 2017



JACK M. BERNARD, ESQUIRE
Attorney for Plaintiff

EXHIBIT “A”



CITY OF PHILADELPHIA
DEPARTMENT OF
LICENSES AND INSPECTIONS

Operations Division, East District
Rising Sun Ave & Benner St, 2nd Floor
Philadelphia, PA 19111
Office: 215-685-0535
Email: OperationsEast@phila.gov

HOLTON ROBERT
4085 RICHMOND ST
PHILADELPHIA PA 19137-1419

L&I CASE NUMBER: 574778

DATE OF ORIGINAL NOTICE: 03/02/17

NOTICE OF INTENT TO CEASE OPERATIONS AND ORDER

Address in Violation: 4087 RICHMOND ST

Dear HOLTON ROBERT:

The Department of Licenses and Inspections conducted an inspection of the referenced premises and determined that it is violation of the Philadelphia Code. As set out in the Code, these violations may pose a threat to the safety, health or welfare to the occupants or surrounding community and require immediate correction.

Due to the nature of the violations cited in the Notice of Violation of Case No. 574778, as referenced above, the Department issues this **INTENT TO CEASE OPERATIONS**, which will become effective 04/12/17. This is your **FINAL WARNING** prior to the issuance of a Cease Operations.

If a Cease Operations is issued, your business/property/establishment will be required to close, or that portion or use of the premises as specified in the Order will be forced to cease immediately.

This Notice of Intent to Cease Operations and Order can only be vacated by obtaining an immediate stay of enforcement as set out in the Administrative Code, or correcting the cited violations and passing an inspection by the Department prior to the Cease Operations effective date. Should you wish to appeal the Notice of Violation and the Cease Operations, you must file that appeal with the Boards Administration within thirty (30) days of the later of this Notice.

Appeal forms may be obtained online at: <http://www.phila.gov/li/Pages/Appcals.aspx> or in person at:

The Board of License and Inspection Review
1401 John F. Kennedy Blvd.
Municipal Services Building - 11th Floor
Philadelphia, PA 19102
Telephone (215)686-2427

As stated above, it is imperative that you address this matter immediately and consider this your final warning prior to the Department issuing a Cease Operations Order.

If you are the occupant of a residential building, a representative of the City of Philadelphia Office of Supportive Housing will be present the day the Cease Order is issued to assist you.

If you have any questions, please contact the Supervisor listed below at 215-685-0535

Sincerely,

East District Operations Supervisor

EXHIBIT “B”



CITY OF PHILADELPHIA

DEPARTMENT OF LICENSES & INSPECTIONS
1130 Municipal Services Building
1401 John F. Kennedy Boulevard
Philadelphia, PA 19102-1687

DAVID J. PERRI, P.E.
COMMISSIONER

March 9, 2017

Robert Holton
4087 Richmond Street
AKA- 3950 Delaware Ave.
Philadelphia, PA 19137

CERTIFICATION OF VIOLATIONS

Subject Premises: "Frankford Creek Right of Way" taken by Eminent Domain in accordance with Ordinance of City Council dated December 19, 1951, a/k/a 4087 Richmond Street.

Inspection: March 2, 2017

Notice of Violation (Case No.574778): Title 4. Building Construction Occupancy Code, Administrative Code §A-301.1.1.5; Zoning and Use Registration Permits.

Cease Operations Order pursuant to Title 14. Zoning and Planning Code §14-306(e):

Upon inspection of the Subject Premises, the Department of Licenses and Inspections determined in accordance with §A-805 that the subject premises is being used and/or operated without the required lawful authorization, zoning and otherwise, intentionally and/or under conditions that bring about an immediate danger to health, welfare or safety and/or a Public Nuisance and a Nuisance per se, due to the existence of violations that would be cited if such Use was lawful and authorized by Zoning Permit and otherwise. Such existing violations and uncted violations are set out as follows:

- No auto wrecking/junk yard license (LO-1 #3374)
- No hazardous materials license (FC-2701.5/1)
- No fire extinguishers (FC-906.1/1)
- MSDS Sheets – MATERIAL SAFETY DATA SHEETS (FC-2703.4/1)
- 704 sign – HAZMAT ID SIGNS (FC-2703.5/1)
- High pile storage of cars (FC-315.3/4)
- Clean up weeds (FC-304.1/3)
- Extension cords (FC-605.5/1)
- Carton/tank label (FC-2703.5/5)
- No smoking signs (FC-2703.7/1)
- No scale license (LO-1 3822)

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2017 APR -3 PM 2:00
DEPT. OF LICENSING
AND INSPECTIONS

- Mark above tanks (FC-2703.5/2)
- Remove defective containers (FC-2703.2/5)

The Department hereby certifies pursuant to 5A-805(b) that due to the current cited unlawful use and the aforementioned uncited violations, the Subject premises is Ceased, effective April 12, 2017, pursuant to the Cease Operations Order served upon you with the Violation Notice and this Certification. Eligibility for a stay of enforcement will not be afforded during the appeal period, unless you receive the required authorization/permit/licenses from the City of Philadelphia/ Department of Licenses and Inspections make the required corrections of all violations.

Sincerely,

James Titus
Code Administrator 2
East Operations Supervisor
7522 Castor Ave.
Philadelphia, PA 19152

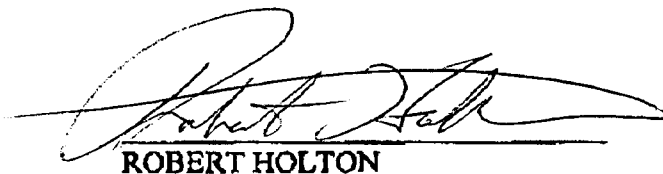
JT:bj
File: 4087 Richmond St.

RECEIVED
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2017 APR -3 PM 1.00
DEPT OF LIC & INS
LICENSES AND INSPECTIONS

VERIFICATION

Robert Holton states that the averments in the preceding **Complaint for Injunctive Relief Pursuant to Applicable Provisions of the Philadelphia Code** are true and correct based on information furnished to him by Plaintiffs.

I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



Handwritten signature of Robert Holton in black ink, featuring a stylized 'R' and 'H'.

ROBERT HOLTON

Dated: April 11, 2017